IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1829 OF 2005

Shivanand Pargonda Hulyalkar ...Petitioner
Vs.
Madanchand Hripath Bhuniya & Anr. ...Respondents

Shri Uday Warunjikar for the Petitioner.
Shri Anurag Jain for the Respondent No.1.
Shri A.S. Gadkari, A.P.P. for the State.

CORAM : A. S. OKA, J.
DATE : OCTOBER 05, 2005.

P.C.:

1. Notice is already issued for Final Disposal. Rule. The Advocate for the Respondent No.1 waives service. The learned A.P.P. waives service for the Respondent No.2. Proceedings under section 145 of the Code of Criminal Procedure, 1973 were initiated by the Sub Divisional Officer, Pune. The said proceedings ended by order dated 29th October, 2004 which was passed against the Petitioner. The Petitioner herein filed a Revision Application in Sessions Court which came to be dismissed by the order impugned in this Petition.

2. The learned Counsel appearing for the Petitioner submitted that apart from the merits of the case, the Petitioner’s Advocate was absent and therefore, Revision Application has been decided in absence of the Petitioner. He therefore, submitted

that one opportunity deserves to be granted to the Petitioner to prosecute his Revision Application on merits.

3. The learned Advocate appearing for the Respondent No.1 relied upon the affidavit in reply and pointed out that the Petitioner remained persistently absent before the Sub Divisional Officer. He submitted that even in the Revisional Court the Petitioner was absent. He submitted that no indulgence deserves to be shown to the Petitioner. He submitted that there is no error in the order passed by the Sub Divisional Officer.

4. I have considered the submissions. On plain reading of the order of the Revisional Court, it appears that the Advocate for the Petitioner was absent. In the absence of the Petitioner’s Advocate the Revision Application has been decided on merits.

5. In my view, Petitioner deserves to be given one opportunity to prosecute his Revision Application on merits. The Revision Application filed by him was decided on merits in absence of his Advocate. It is true that prejudice will be caused to the Respondent No.1. However, the prejudice can always be

compensated by directing the payment of costs. However, while passing the order of remand, it will have to be made clear that if the Petitioner and/ or his Advocate do not remain present on the date fixed by this Court, the learned Additional Sessions Judge, Pune will be free to pass appropriate orders.

6. Considering the facts and circumstances of the case, the amount of costs is quantified at Rs.7,500/-.

7. Hence, I pass the following order:

: O R D E R :

i) The impugned Judgment and Order dated 14th July, 2005 passed in Criminal Revision Application No.755 of 2004 is quashed and set aside subject to condition of the Petitioner depositing in the Sessions Court a sum of Rs.7,500/- by way of costs within a period three weeks from today.

ii) If the amount of costs is not deposited within the stipulated period, this Petition will stand dismissed and impugned order will stand confirmed.

iii) If the Petitioner deposits the amount of costs

within the stipulated time, the parties will appear before the learned Additional Sessions Judge, Pune on 21st November, 2005 at 11.00 a.m. for fixing the schedule of hearing.

iv) The learned Additional Sessions Judge will decide the Revision Application on its own merits as expeditiously as possible.

v) It is made clear that if the Petitioner and/ or his Advocate remain absent on the dates fixed for hearing in the Revision Application, the learned Sessions Judge will be free to pass appropriate orders.

vi) The Respondent No.1 will be entitled to withdraw the sum of Rs.7,500/- deposited by the Petitioner.

vii) Rule is made partly absolute in the above terms with no orders as to costs.

viii) Parties to act upon an authenticated copy of this order.

JUDGE